ARKANSAS SUPREME COURT

No. CR 05-689

NOT DESIGNATED FOR PUBLICATION

JOHNNY A. RUCKER
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 16, 2006

APPEAL FROM THE CIRCUIT COURT OF CLARK COUNTY, CR 93-12, HON. JOHN ALEXANDER THOMAS, JUDGE

AFFIRMED

PER CURIAM

In 1993, Johnny A. Rucker was convicted of capital murder and sentenced to life without parole. This court affirmed the judgment. *Rucker v. State*, 320 Ark. 643, 899 S.W.2d 447 (1995). Rucker file a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied. We affirmed the order in an unpublished opinion. *Rucker v. State*, CR 96-1029 (Ark. January 15, 1998) (*per curiam*). On October 1, 2001, Rucker filed a petition for writ of *habeas corpus* under Act 1780 of 2001, which was denied by the trial court without a hearing. This court reversed and remanded for an evidentiary hearing. *Rucker v. State*, CR 02-145 (Ark. June 10, 2004) (*per curiam*). On remand, the trial court conducted an evidentiary hearing and denied the petition once again. Rucker now brings this appeal of that order denying his petition under Act 1780.

In his petition, appellant Rucker requested retesting for fingerprints on the gun used as the murder weapon. He now urges that, with the results of the testing, he may be able to assert a defense alleging the prints on the gun belonged to one of three other individuals he contends were present on the night of the murder, and that the testimony at trial excluded appellant as having left the prints. Appellant misconstrues the fingerprint examiner's testimony. The expert did state that he did not find appellant's prints on the gun. He made that statement, however, after he clearly stated that he could not discern to whom the prints on the gun belonged. We cannot say that his testimony clearly

excluded the possibility that the prints that could not be identified might have belonged to appellant, if identification were possible.

In any event, appellant alleges that new technology could provide identification of the prints on the weapon that previous testing had failed to identify. Appellant contends that, if retested, the prints could be identified through submission to the Automated Fingerprint Identification System ("AFIS"). At the hearing on the petition, the trial court ruled that appellant had failed to show that there was any new scientific process or procedure that would lead to new noncumulative evidence. Appellant argues on appeal that the trial court erred in reaching that conclusion.

We do not reverse a trial court's decision granting or denying postconviction relief unless it is clearly erroneous. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Id.*; *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

Act 1780 provides that a writ of *habeas corpus* can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. *See* Ark. Code Ann. § 16-112-103(a)(1) (Supp. 2003), and §§ 16-112-201--207 (Supp. 2003); *see also Echols v. State*, 350 Ark. 42, 44, 84 S.W.3d 424, 426 (2002) (*per curiam*). Under the act as in effect when appellant filed his petition, a number of predicate requirements must be met before a circuit court can order that testing be done. *See* Ark. Code Ann. §§ 16-112-201 to -203 (Supp. 2003). Section 16-112-202(c)(1) provided that testing be preformed if:

> (A) A prima facie case has been established under subsection (b) of this section;
> (B) The testing has the scientific potential to produce new noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and
> (C) The testing requested employs a scientific method generally accepted within the relevant scientific community.

The trial court found that appellant had failed to make the requisite showing under section 16-112-202(c)(1)(B).

The evidence presented at the hearing on the Act 1780 petition was that the Arkansas State

Crime Laboratory has had access to AFIS since 1996. The AFIS database, and another database, which the crime lab would soon be able to access, allows the State to submit a fingerprint for comparison with a large number of prints contained within the database, provided that the print meets certain criteria. This allows the fingerprint examiner to use the computer to select a small number of potential matches, which can then be examined manually to determine whether a match does exist. Without question, the AFIS system has provided new technology that allows many more fingerprints to be compared to crime scene prints, and it is a significant advancement.

There was additional testimony at the postconviction relief hearing, however, concerning the quality of the prints on the gun. The expert who testified indicated that a print would have value for comparison purposes if it had seven points of minutia, or characteristics. While there may be some prints that are unique so that a match could be confirmed on less points of minutia, this was a rare enough occurrence that the expert had not seen such a unique print within his 25 years of experience. The testimony at trial had been that there was evidence the gun had been handled, but that the prints on the gun were not of value for comparison, and that the fingerprint examiner at trial had not been able to discern whether the prints were fingerprints or palm prints. The expert at the hearing was familiar with that examiner's work, and believed that his statements indicated that he was not able to identify seven points of minutia in the prints.

When questioned concerning the technology available to improve the quality of the prints, the expert witness testified that it was now possible to enhance the print, so that what is faint is more discernable, but that there was no method to increase the number of minutia. With less than seven minutia, the expert testified that the possibility of making identification was remote. The AFIS system would accept a print with less than seven minutia, but the probability of an identification was still extremely low because the number of minutia was not sufficient.

Appellant concedes in his brief that he carried the burden to make the requisite showing under section 16-112-202(c)(1)(B). Appellant has not shown that AFIS, or any other new technology, would produce an identifiable print. While appellant argues that AFIS provides for enhancement of

the prints to be loaded, appellant has not shown that the prints on the gun may have the minutia required for identification, even if enhanced. In fact, the expert witness believed the testimony at trial indicated there were likely not to have been seven points of minutia.

Under Act 1780, testing is not authorized based on the slight chance it may yield a favorable result, and scientific testing of evidence is authorized only if testing or retesting can provide materially relevant evidence that will significantly advance the defendant's claim of innocence, in light of all the evidence presented. *See Johnson*, 356 Ark. at 546, 157 S.W.3d at 161. Here, appellant did not provide evidence of more that a slight chance new evidence would yield a favorable result, or any result. We cannot say the trial court clearly erred in determining appellant failed to meet his burden of proof. Accordingly, we must affirm the order denying retesting of the gun to identify fingerprints.

Affirmed.